

# City of Detroit


## CITY COUNCIL

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**TO:** The Honorable Detroit City Council

**FROM:** David Whitaker   
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**DATE:** July 24, 2007

**RE:** **NORTHWEST COMMUNITY COALITION RESOLUTION TO SUSPEND FORECLOSURE AUCTIONS**

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At the Honorable City Council's request, the Research & Analysis Division (RAD) submits the following report regarding the resolution submitted by the Northwest Community Coalition. Highlighting some of the serious challenges facing the City of Detroit that has culminated in a wholesale decline in property values throughout the City, but particularly in the Northwest Detroit Community, in their resolution the sponsors cite the unprecedented level of home foreclosures and property auctions as being a principle cause in bringing about this decline. The Coalition recommends the creation of an alternative to property auctions, establishment of a "protected tax zone" in zip codes 48221 and 48235 and use of community councils to coordinate homeowner maintenance plans, and they seek your Honorable Body's endorsement by way of passage of the submitted resolution.

The proposed resolution, as drafted, contains provisions that raise factually constitutional issues<sup>1</sup> and several provisions directly conflict with state law. Historically, property rights have been viewed as a "bundle of rights" where each "stick" in the bundle represents an individual right (i.e. right to sell, lease, mortgage, donate, subdivide, grant easements, exclude others). One of the most significant of property rights is the right to alienate (sell or transfer interest in property). Attempts to prohibit or restrict a landowner's ability to alienate are considered void against the public policy that allows landowners to freely dispose of their property. The proposed resolution delineates the use of deed restrictions and land use covenants for community councils to establish and enforce maintenance standards. Moreover, it calls for City Council to establish the vehicle for the community councils to enforce the maintenance standards. This runs

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<sup>1</sup> 5<sup>th</sup> and 14<sup>th</sup> amendments to the U.S. Constitution, and Article 1, §9 Michigan State Constitution forbids the passage of laws that would impair an obligation contracted for.

afoul of both the right to alienate and the right of ownership. Because the proposal indicates the City government is involved, it could also be construed as a partial taking.<sup>2</sup>

The resolution also proposes a moratorium on auctions of residential property located within the designated zip codes. Because tax or mortgage foreclosures references both public and private foreclosures, RAD will address tax and mortgage foreclosures. State law governs the tax foreclosure process. The foreclosing governmental unit<sup>3</sup> is required to conduct at least two property sales<sup>4</sup> after the following rights of refusal are offered:

1. The State of Michigan has the first right of refusal to purchase the property prior to the minimum bid auction. It may purchase the property at the minimum bid or the fair market value whichever is greater.
2. The City of Detroit has the ability to purchase the property for a public purpose at the minimum bid price if the State of Michigan decides not to purchase at the minimum bid auction.
3. The County of Wayne has the ability to purchase the property for the minimum bid price if the City elects not to exercise its right of refusal. Note that the County is not restricted to obtain the property for a public purpose.
4. If the property is not sold at the second auction where no minimum bid is required, Wayne County transmits a list of unsold properties to the City of Detroit by December 1<sup>st</sup>.
5. The City has until December 29<sup>th</sup> to object in writing to receipt of the unsold properties. No action results in the City obtaining all of the unsold properties.<sup>5</sup>
6. On December 30<sup>th</sup>, the County transfers all unsold property to the City unless a written objection has been filed. If the City objects to the receipt of a parcel, the County retains possession of the property.

Therefore, one option for properties to avoid the tax foreclosure auction is the exercise of the right of refusal provided the property is obtained for a public purpose. Another option to avoid the foreclosure auction could be inclusion of the property in Project Saved II, a property rehabilitation program operated by the Wayne County Land Bank Corporation. This program focuses on rehabilitation of foreclosed properties by matching non-profit community development corporations together.

The Wayne County Sheriff holds mortgage foreclosure auctions on a weekly basis. Lenders and banks also have the ability to facilitate auctions of properties under their control. The relationship between a borrower and lender is a contractual one. When individuals fail to meet their contractual obligations (i.e. missing payments) the lender has the ability to foreclose in an effort to recoup the outstanding debt. Under standard mortgage contracts, the remedy for breach

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<sup>2</sup> Without further information regarding the proposed community councils and home maintenance standards, an in-depth analysis of the constitutional considerations is not possible.

<sup>3</sup> Wayne County, as the foreclosing governmental unit, cannot transfer property that is in the tax reversion process, until the procedures set forth in the General Property Tax Act, 1893 PA 206 as amended by 1999 PA 123, have occurred.

<sup>4</sup> MCL 211.78m(2).

<sup>5</sup> Note that the City has only taken a select number of properties per year since Wayne County became the foreclosing governmental unit for the City of Detroit.

is foreclosure. Therefore, an attempt by the City to curtail mortgage foreclosure auctions could be construed as an interference with a contractual relationship between private individuals<sup>6</sup>. One option to avoid any potential interference with a contractual relationship is to obtain agreements with lenders not to hold property auctions in order to implement an alternative property disposition program. Participation by lenders and coordination would be very complex due to the number of mortgage companies with which agreements would need to be made.

The resolution makes reference to the establishment and enforcement of "Community Home Maintenance Standards" but it is unclear as to what these standards are. The City of Detroit, however, has enacted a property maintenance code<sup>7</sup> that should be referenced to the group for review and consideration. Numerous departments participated in the drafting of the code that was designed to improve the look and the living conditions of the community so as to stabilize property values throughout the City of Detroit. In light of this existing law it may be unnecessary for this group to initiate new legislation in this area.

### **Conclusions**

Due to the constitutional challenges that the submitted resolution presents, RAD would advise City Council not to approve it in its present form.

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<sup>6</sup> See footnote 1 above.

<sup>7</sup> Ordinance No. 18-03, Chapter 9, Article 1, "Detroit Property Maintenance Code".

## **THE NORTHWEST COMMUNITY COALITION**

**Blackstone Park Association, Bagley Community Council,  
Meyers 7/8 Coalition, Greenwich Park Association  
Schaefer 7/8 Community Council, Blackstone Co-Op Action Group  
Black Caucus Foundation of Michigan**

Whereas, competitive challenges and operational changes in America's industrial manufacturing sector in general, and the global auto industry, in particular, have had a catastrophic impact on Michigan's economy. And whereas, the State has failed to successfully invest in expansion and diversification of its most prominent or promising economic sectors and adjust its business climate at a rate to supplant employment and revenue losses. And whereas the resulting challenges and changes has resulted in Michigan ranking last in American State prosperity.

And whereas, the State's economic woes are magnified in intensity throughout Wayne County in general, and in the City of Detroit specifically. And Whereas the lack of private investment and Federal or State resources to support rapid reengineering of the State's economy or a revitalization of core cities or urban centers has left many local units of government and their residents to their own devices to manage through the economic downturn and transition, resulting in a reduction in the quality of life; and for many, the elimination of an American dream....homeownership.

And whereas, the total cost/loss in Southeastern Michigan's net worth in 2006 exceeded \$3.2 billion resulting in a significant destruction of home equity which is threatening to create long term consequences for small business formation and flight of capital given many people use equity to start their business.

And whereas, the City of Detroit is facing a crisis in maintenance of neighborhood stability and property values. And whereas rampant public and private foreclosures and resulting auctions threaten to artificially depress property values and create the largest single reduction in resident wealth in 2007 that the City has ever experienced.

And Whereas, in excess of 12,000 residential properties in the City of Detroit may find their way to public auction before fiscal year end, and Northwest Detroit as one of the fundamental tax generating and vote producing community's in the City of Detroit finds itself facing a serious potential for property value decline as a result of single family home auctions.

Therefore Be It Resolved that the membership and residents of the Coalition support creation of a responsible alternative to auction which provides the City with revenue needed while maintaining property values at a market rate which creates security for current Detroit homeowners and increased marketing attractiveness to "gainfully employed new residents". Be it further resolved that the Detroit City Council and State Legislative Delegation is urged to declare zip codes 21 and 35 as "protected tax zones" which shall be defined as an area that is fundamental to maintenance of a local unit of governments property tax revenue, wherein publicly inventoried properties are matched with viable primary residence owners and restricted from auction; thereby implementing a moratorium on all public auction activity within the zone.

Be It Further Resolved that the Detroit City Council will support a consolidation and distribution plan for home owner maintenance and will establish a legal vehicle inclusive of, but not limited to, deed restrictions and land use covenants for community councils to establish and enforce "Community Home Maintenance Standards".

Be it Further Resolved that a copy of this resolution be provided to the Mayor, Detroit City Council, Wayne County Executive, Wayne County Commission, Governor, and members of the Detroit State Legislative Delegation.

## The Northwest Community Coalition Organizational Goal

**Organizational Goal:** Build Coalition of Community Councils to work together toward the revitalization of neighborhoods in Northwest Detroit and a return to "safe, stable, healthy communities". The **strategies** for achieving this goal were are 3-fold:

1. *Encouraging and Facilitating Home Ownership for Residency Purposes*
  - a. Support "Buy In Detroit" Campaign and pilot for rehab of HUD homes and family placement process.
  - b. Seek moratorium on City and County auctions for designated period to test pilot results.
2. *Support Enforcement of Community Standards*
  - a. Establish priorities for the enforcement of property code and nuisance ordinance violations.
  - b. Implement oversight and accountability of city enforcement processes to ensure standards are enforced.
3. *Educate & Support Neighbors*
  - a. Communicate expectations of responsible neighbors.
  - b. Connect neighbors with help for property improvements and financial problems.
  - c. Maintain Website as community information resource.

### Organization Structure

